

WAGANAKISING ODAWAK STATUTE 2013\_\_\_\_  
LTBB GAMING ENTERPRISE BOARD OF DIRECTORS

SECTION I. PURPOSE; AUTHORITY, FINDINGS

- A. Purpose. The purpose of this Statute is to establish a Gaming Enterprise Board of Directors to provide monitoring, oversight, and direction regarding the management of any Little Traverse Bay Bands of Odawa Indians (Little Traverse Bay Bands of Odawa Indians) Tribal Gaming Enterprises in order to maximize revenue potential for the Tribe.
- B. Authority. The Tribal Council of the LTBB adopts this Statute in accordance with the Constitution of the LTBB that delegate to the Tribal Council the responsibility:
1. Promote with special care the health, educational and economic interests of all the people, especially our children and elders, and shall protect them from social injustice and all forms of exploitation;
  2. Regard the raising of the level of nutrition and the standard of living of our people, and the improvement of public health as among their primary duties;
  3. Establish and maintain within the limits of their economic capacity and development, effective provision for securing the right to work, to education and assistance in cases of unemployment, old age, sickness and disablement, and in other cases of need;
  4. To be the Legislative body and to make laws and appropriate funds in accordance with Article VII;
  5. Establish committees, commissions, and boards, and approve appointments as presented by the Executive. The Tribal Council shall develop laws setting out qualifications for appointees and ensuring that the Tribal membership is given reasonable notification of available positions;
  6. To provide by statute for the management of any and all economic affairs and enterprises of the LTBB that will further the economic development of the Tribe or its members. Such statutes will delegate management responsibilities to tribally chartered corporations or other subordinate Tribal entities, or where appropriate, to the Executive Branch.
  7. Approve the creation or dissolution of Executive divisions or departments to promote and protect the peace, health, safety, education, and general welfare,

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<sup>1</sup> Submitted to Tribal Council by Tribal citizen John Bott. Sponsored by Councilor Keshick for posting purposes and posted by Tribal Council to the Legislative Calendar November 3, 2013.  
Secretary Shananaquet \_\_\_\_\_

including but not limited to cultural and natural resources, of the LTBB and its members;

C. Findings. The Tribal Council finds that:

1. The Indian Gaming Regulatory Act identifies that a principal goal of federal Indian policy is to promote Tribal economic development, tribal self-sufficiency, and strong Tribal Governments, and has set forth limitations regarding the use of gaming revenues by Indian Tribes, as well as imposing on Tribes the manner in which they must operate their gaming enterprises; and
2. The Gaming Enterprise(s) continue to grow and expand as the Tribe's primary source of governmental revenue and jobs; and
3. The nature of the Gaming Enterprise(s)' 24-hour year-round operations requires constant monitoring, oversight, and direction; and
4. Establishing of a Board of Directors for the Gaming Enterprise(s) to provide appropriate monitoring, oversight, and direction regarding the management and operation of any and all existing and future Gaming Enterprise(s) will serve the best interests of the Tribe by maximizing revenue for the benefit of the Tribe, reducing expenses where appropriate, and minimizing the potential for political interference of business decision-making, all in accordance with the goals and budgets of LTBB as established by Tribal Council.

SECTION II. ADOPTION; AMENDMENT; REPEAL; SEVERABILITY, TITLE

- A. Adoption. This Statute is adopted by Resolution #\_\_\_\_\_, which repeals all previous versions of the Board of Directors Act of 2005, Statute #05-800-03 effective thirty (30) days from the date of adoption, and replaces that Act with this Statute #10-800-03.
- B. Amendment. This Statute may be amended by the Tribal Council in accordance with the Constitution, the Administrative Procedures Act, and any other laws or rules set forth governing amendment of laws of the Little Traverse Bay Bands of Odawa Indians.
- C. Repeal. This Statute repeals and replaces Waganakising Odawak Statue 2010-021 Gaming Delegation and Authority Statute and any previous Statues including 2009-012, 2001-12, and 2000-02.

D. Severability. If any provision of this Statute or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this Statute which can be given effect without the invalid provision or application, and to this end the provisions of this Statute are severable.

E. Title. This Statute shall be referred to as the WOS Gaming Enterprise(s) Board of Directors Statute # \_\_\_\_\_.

### SECTION III. DEFINITIONS

For purposes of this Statute, certain terms are defined in this Article. The word "shall" is always mandatory and not merely advisory.

A. "*At-Large Member*" means a Member of the Gaming Enterprise Board who is enrolled members of LTBB.

B. "*Capital Expenditures*" means the amount spent to add to the value of or extend the useful life of property, plant or equipment or to adapt it to a new or different use. Expenses that keep property, plant and equipment in an ordinarily efficient operating condition and do not add to its value or appreciably add to its useful life are not capital expenditures.

C. "*Collective Bargaining Agreement*" means a contract between a Gaming Enterprise and a labor organization regarding wages, hours, terms or conditions of employment pursuant to the LTBB Fair Employment Act.

D. "*Contract*" means an agreement between two or more parties creating obligations that are enforceable or otherwise recognizable by law.

E. "*Daily Operational Expense*" means those expenses identified in the budget as necessary to operate and manage the Enterprise on a day-to-day basis, and include but are not limited to: payroll; insurance premiums; utilities; and payments made in accordance with the terms of an approved contract.

F. "*Elected Official*", as used in this Statute, shall mean the LTBB Chairman, Vice-Chairman and Tribal Council.

G. "*Board*" shall mean appointed members of the LTBB Gaming Enterprise Board of Directors.

H. "*Gaming Enterprise(s)*", as used in this Statute, shall mean the Odawa Casino Resort and any future facility at which gaming is authorized under Tribal, State, and/or Federal Law

1 including, but not limited to, the Indian Gaming Regulatory Act, the Tribal-State Gaming  
2 Compact(s), and the Tribal Gaming Statute. Gaming Enterprises are considered public  
3 employers, and are authorized to conduct activities including, but not limited to, the  
4 following:

- 5 1. Gaming activities authorized under the Tribal-State Gaming Compact.
- 6 2. Hotel and recreational activities.
- 7 3. Entertainment and conference activities.
- 8 4. Dining and banquet activities.
- 9 5. Activities reasonably related to the above.
- 10 6. Other activities as may be authorized from time to time by Resolution of the  
11 Tribal Council amending this Statute.

12 I. “*Gaming License Eligibility Standards*”, as used in this Statute, shall mean the standards  
13 to be applied when determining whether elected officials are eligible to hold and/or  
14 maintain a gaming license. “Gaming License Eligibility Standards” shall include  
15 application of all tribal and federal licensing eligibility requirements governing Primary  
16 Management Officials.

17 J. “Good Cause”, as used in this Statute as a basis for removal of a Member of the Board of  
18 Directors, shall have the meaning as described to it under Article V of this Statute.

19 K. “Official Action” shall mean an action taken by Motion approved by a majority of the  
20 Members of the Board of Directors present and voting at an official meeting.

21 L. “Official Capacity”. A Member of the Board of Directors is acting in his or her official  
22 capacity only when undertaking actions officially sanctioned and approved by a majority  
23 of Members of the Board of Directors present and voting at an official meeting.

24 M. “*Primary Management Official*” shall have the meaning attributed to it under the Indian  
25 Gaming Regulatory Act, as amended from time to time.

26 N. “*Public Employer*” means a Gaming Enterprise or other subordinate economic  
27 organization, department, commission, agency, or authority of the Tribe engaged in any  
28 Governmental Operations of the Tribe.

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SECTION IV. BOARD OF DIRECTORS-CREATION, COMPOSITION,  
QUALIFICATIONS

- A. Board of Directors-Creation. The Tribal Council hereby creates and establishes the Board of Directors for the Gaming Enterprise(s), to act as an independent but subordinate organization of the Tribe in overseeing the Tribe's Gaming Enterprise(s), subject to the following conditions:
1. The Board of Directors and its Members shall be subject to the Constitution, laws, and resolutions of the Tribe, including the legislative authority of the Tribal Council to enact laws and resolutions and the executive authority of the Chairman to carry out the laws and resolutions enacted by the Tribal Council. The Board shall periodically meet and report to both the branches of government.
  2. The Board of Directors and its Members shall be subject to all federal laws, or any laws promulgated pursuant to federal law, including but not limited to the Indian Gaming Regulatory Act, the Tribal-State Gaming Compact, the Gaming Statute of the Tribe, Gaming Enterprise Board Statute and all applicable laws, regulations, internal operating procedures and minimum internal control standards.
  3. The Members of the Board of Directors shall take an oath of office given by a member of the Judiciary of the Tribe Tribal Court, and shall file a signed confidentiality statement with the Legislative Office.
  4. All of the Members will be independent of management and no member of management will serve as a Member.
- B. Composition. The Board of Directors shall be comprised of at least three (3) and no more than five (5) Board Members seated as follows: Chairperson; Vice-Chairperson and Directors.
1. The Chairman shall nominate Member of the Board to act as Chairperson and appointed by Tribal Council.
  2. The remaining Officers of the Board shall be filled by a vote of the Board Members duly seated on the Board of Directors.
  3. The Tribal Council may elect to secure a bond and/or insurance covering activities of Members of the Board of Directors. All Members of the Board of

1 Directors shall cooperate fully with the Tribe to secure bonding and/or insurance  
2 covering his or her activities as a Member of the Board of Directors.

3 4. The following individuals shall be prohibited from serving as a Member of the  
4 Board of Directors:

5 a. Any person who previously held a seat on the Board of Directors who was  
6 removed for good cause.

7 b. Any person previously disqualified from serving on the Board of  
8 Directors.

9 c. Any person sitting as a Commissioner on the LTBB Gaming Regulatory  
10 Commission or other Tribal Gaming Regulatory Agency.

11 d. Any person employed by any Gaming Enterprise, LTBB Gaming  
12 Regulatory Commission or other Tribal Gaming Regulatory Agency.

13 C. Qualifications. To serve on the Gaming Enterprise Board a person must meet the  
14 following criteria:

15 1. Minimum of five (5) years of business or financial experience.

16 2. Minimum of five (5) years in gaming management or hospitality management.

17 3. Emphasis will be given towards five (5) years of management experience in a  
18 gaming facility.

19 4. The appointee must meet the qualifications for licensing under the Tribe's  
20 Gaming Regulatory Ordinance.

21 5. No person can serve on the Gaming Enterprise Board who is employed by any  
22 LTBB Gaming Enterprises or gaming enterprises of any another federally  
23 recognized Indian Tribe, or any facility or enterprise conducting gaming.

24 6. No person can serve on the Gaming Enterprise Board, who has been convicted of  
25 a felon in Tribal, State, or Federal Court within ten (10) years of the date of the  
26 appointment.

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28 SECTION V. REMOVAL

29 A. The Board of Directors shall have the power to remove a Board Member for good  
30 cause upon a majority vote of the Board.

- 1 B. Good cause, as used in this Statute as a basis for removal, means that a Member of the  
2 Board of Directors shall be removed for the following reasons by the Board of Directors:
- 3 C. Failure to attend four meetings of the Board of Directors, including special or emergency  
4 meetings, within a twelve month period.
- 5 D. Revocation of a professional license, permit or certification that reflects on the  
6 qualifications of the member to sit on the Board or reflects on the professional  
7 responsibilities and integrity of the member.
- 8 E. Conviction of a felony or conviction of a misdemeanor act that impinges on the  
9 professional responsibilities and integrity of the member.
- 10 F. Failure to carry out the fiscal obligations mandated by this Statute.
- 11 G. Removal Process. The following process for removal of a member of the Board of  
12 Directors shall be strictly adhered to:
- 13 1. Notification – Reasons for Removal. The member of the Board of Directors  
14 subject to removal shall receive written notification that sets forth, with  
15 specificity, the reason(s) for removal. The Notification shall include, at a  
16 minimum, the conduct, incident, or action that is the basis for the removal and the  
17 date and place the conduct, incident or action occurred; any documents relevant to  
18 the conduct, incident, or action; and the names of witnesses or other individuals  
19 with information regarding the conduct, incident or action.
- 20 2. Notification - Hearing Date and Time. The Notification shall include the place,  
21 date and time of the meeting at which the Board Member may answer the charge  
22 for removal. Removal hearings shall only be heard in a closed session meeting;  
23 provided that the Board Member subject to removal may request a public hearing.
- 24 3. Filing of Notification. A copy of the Notification and any attachments shall be  
25 forwarded to the Executive and Legislative Office.
- 26 4. Witnesses; Documents. The Board Member who is the subject of a removal  
27 proceeding shall submit, no later than forty-eight (48) hours prior to the hearing  
28 date and time, a list of proposed witnesses that will be called and/or a copy of all  
29 documents that will be presented at the removal hearing. Witnesses, at the time of  
30 the hearing, shall swear an oath as to the truth and accuracy of their statements.
- 31 5. Majority Vote Required. A Board Member shall only be removed by majority  
32 vote.



6. Final Decision. A majority vote of the Board of Directors, or the Tribal Council in accordance with Section V (G)(8) below, to remove a Board Member shall be final and may not be appealed to the Tribal Court.
7. Return of Property. Any Board Member subject to removal shall immediately, upon receipt of notification of removal, return any property, including documents or records of any type that rightfully belongs in the possession of the Board of Directors.
8. Removal by Tribal Council. In the event the Board of Directors fails to bring a charge for removal against a Board Member for good cause under Section 5.02 above, the Tribal Council may remove the Board Member in accordance with the procedures identified in Section V (G)(3) above.

#### SECTION VI. AUTOMATIC DISQUALIFICATION

- A. Automatic Disqualification - General. Automatic disqualifications are non-discretionary and must be strictly enforced by the Chairperson, or the Vice-Chairperson presiding in the Chairperson's absence.
- B. Grounds for Disqualification. A Board Member shall be automatically disqualified from serving on the Board of Directors when one of the following occurs:
  1. The Board Member no longer holds or is eligible to hold a valid gaming license issued by the Tribe's gaming regulatory agency; or
  2. The Board Member is no longer an enrolled member of LTBB; or
  3. The Board Member becomes an elected official during their term.
  4. Disqualification - Procedure. When a Board Member is subject to disqualification under Section 6.02 above, the Chairperson, or the Vice-Chairperson presiding in the Chairperson's absence, shall notify the Board Member in writing. The notification shall contain, at a minimum:
    - a. The reason(s) for the disqualification; and
    - b. Notice that the Board Member is disqualified effective immediately; and
    - c. Notice that the disqualification is not appealable to any hearing body.



- 1 C. Return of Property. Any Board Member disqualified from serving on the Board of  
2 Directors shall immediately return any property, including documents or records of any  
3 type that rightfully belongs in the possession of the Board of Directors.

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6 SECTION VII. NOTICE; POSTING REQUIRED; VACANCIES

- 7 A. Notification Required. The Board of Directors is required to notify the Chairman and  
8 Tribal Council, in writing, when a vacancy is created by conclusion of a term, removal by  
9 the Board or Tribal Council, disqualification, or resignation of a member.

- 10 B. Posting. Notice of Vacancy for Applicants. The Chairman shall post for 30 days a notice  
11 that a vacancy on the Board of Directors exists, the preferred qualifications for the vacant  
12 position, the term of office for the vacant position, and the opening and closing dates of  
13 the application period. All applications received shall be forwarded to the Tribal Council  
14 with the nominations presented under Section 7.04 of this Statute. This Section shall not  
15 apply to appointments to the First Board of Directors appointed in accordance with this  
16 Statute.

- 17 C. Vacancy. A vacancy exists upon removal by the Board of Directors or Tribal Council,  
18 automatic disqualification, resignation, expiration of term of office, or upon receipt of the  
19 notice of vacancy by the Chairman.

- 20 1. Procedure for Filling Vacancies. The following procedures shall be adhered to  
21 when filling vacancies on the Board of Directors:

- 22 a. The Board of Directors performs duties necessary to the activities of the  
23 Gaming Enterprise(s) such that it is important that vacancies be filled in an  
24 efficient and timely manner. The Chairman shall submit nominations for  
25 vacancies on the Board of Directors within 45 days of receipt of notice of  
26 a vacancy.

- 27 b. With respect to vacancies existing on the date of adoption of this Statute,  
28 the Chairman shall submit nominations to Tribal Council for approval  
29 within seven (7) days after the date of adoption.

- 30 c. If the Chairman is unable to nominate individuals to fill vacancies on the  
31 Board, he or she shall identify the reasons why vacancies cannot be filled  
32 within the timelines set forth in this section, identify all attempts made to

1 nominate qualified persons, and identify with specificity what  
2 qualifications each applicant is lacking.

3 d. If a vacancy occurs on the Board of Directors in one or more of the seats  
4 which requires a minimum qualification as set by Section 4.02 above, the  
5 remaining Members of the Board of Directors may continue to conduct  
6 business.

7 e. A vacancy in a seat shall be filled for the remainder of that term.

8 f. A vacancy in the Board of Directors' seat reserved for the Chairman due to  
9 removal, disqualification or resignation shall be filled by a Tribal Council  
10 Member in accordance with Section 4.02(a) (2) of this Statute.

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12 **SECTION VIII. QUORUM; MEETINGS; MINUTES; COMPENSATION**

13 A. Quorum. A quorum of the Board of Directors shall consist of any three (3) Members of  
14 the Board of Directors. A quorum shall be required to conduct business.

15 B. Meetings. The Board of Directors shall hold regularly scheduled meetings of a minimum  
16 of twice per month. The Board may convene special or emergency meetings as necessary.

17 1. Requirement to Attend Meetings. All Board Members shall participate in all  
18 regularly scheduled meetings in order to be compensated. Board Members may  
19 participate in meetings by telephone or electronic device upon approval of the  
20 remaining Board Members, when conditions prohibit attending in person.

21 2. Procedures. The Board of Directors shall be authorized to establish its own  
22 meeting procedures not inconsistent with this Statute; provided that the Board of  
23 Directors shall be held to act by Motion under the following circumstances:

24 a. When approving contracts and agreements in accordance with Sections  
25 IX and XI; and

26 b. When authorizing a waiver of the sovereign immunity of the Gaming  
27 Enterprise(s) in accordance with Section IX and X; and

28 c. When approving and authorizing execution of Collective Bargaining  
29 Agreements in accordance with Section IX and X; and

30 d. When authorizing expenditures in accordance with Section IX.

1 C. Minutes. The Board of Directors shall prepare minutes of all open and closed session  
2 meetings which shall describe with specificity all official actions taken by the Board, and  
3 shall memorialize all discussions related to those official actions. Copies of the Board of  
4 Directors' minutes shall be posted for acceptance to the record in a timely manner.

5 D. Compensation. Each Member of the Board of Directors shall be paid reasonable  
6 compensation as agreed upon by the Executive and Legislative branches, subject to the  
7 following limitations:

8 1. Compensation for Members of the Board of Directors shall not be diminished  
9 during any term of office.

10 2. Compensation shall be paid from the budget of the Enterprise(s).

11 3. Continued learning will be required of each Member and the expenses for costs,  
12 travel and per diem for this official business task will be provided or reimbursed  
13 upon receipt.

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15 SECTION IX. RESPONSIBILITIES AND DUTIES

16 A. Responsibilities. The Board of Directors shall be responsible for the following:

17 1. To ensure compliance with the laws and resolutions enacted by the Tribal  
18 Council, including any goals for the Gaming Enterprise(s) established by the  
19 Tribal Council; and

20 2. To ensure compliance with all applicable laws and regulations, including the  
21 Indian Gaming Regulatory Act, the Tribal-State Gaming Compact, the Gaming  
22 Statute of the Tribe, and all applicable laws, regulations, internal operating  
23 procedures, policies and minimum internal control standards; and

24 3. To account for and transfer, or to direct the accounting and transfer of, all  
25 revenues generated by the Gaming Enterprise(s), excluding authorized operating  
26 funds, on at least a 48-hour basis to an account or accounts authorized and  
27 established by the Tribal Council by law or resolution; provided that such  
28 transfers shall be made according to written procedures established by the Board  
29 of Directors which shall be subject to modification by the Tribal Council law or  
30 resolution; and,

31 4. To increase the number of Tribal Members employed by the Gaming  
32 Enterprise(s) in accordance with the Indian Preference Statute and Fair  
33 Employment Act; and,

5. To increase the number of Tribal Members employed by the Gaming Enterprise(s) in management level positions in accordance with the LTBB Preference Statute Fair Employment Act; and,
6. To maintain a consistent and regular attendance record; and,
7. To be held accountable, to the highest degree, for the accuracy and thoroughness of the records and reports of the Gaming Enterprise(s); and,
8. To be responsible for the successful overall direction and operation of all activities of the Gaming Enterprise(s) in accordance with the laws and resolutions enacted by the Tribal Council.
9. Responsible for the stewardship of the Gaming Enterprise(s) in the public and is ultimately accountable for the planning and management of the affairs and business of them.

B. General Duties. The Board of Directors shall:

1. Create, develop, and implement an effective strategy of business organization for the Gaming Enterprise(s) including setting objectives for future growth and expansion in accordance with the Annual Operating Plan, Annual Budget and Marketing Plan approved by the Tribal Council; and,
2. Ensure the quality of management activities and operations in all areas of the Gaming Enterprise(s); and,
3. Have all duties and responsibilities customary for a Board of Directors of a gaming, restaurant, hotel, and entertainment enterprise, including responsibility for the overall operation of the Gaming Enterprise(s), subject to any limitations or prohibitions set forth in this Statute.

C. Specific Duties.

1. General Manager, Staff. The Board of Directors shall have the power to hire, employ and terminate a General Manager for the LTBB Gaming Enterprise(s) in accordance with the laws and resolutions of the Tribe. The Board of Directors shall enter into an employment contract with the General Manager; provided that such contract shall be subject to review by the LTBB Legal Department. The Board of Directors shall evaluate the performance of the General Manager on an annual basis or more frequently as needed. The Board of Directors shall have the power to terminate the employment of the General Manager in accordance with the by-laws adopted by the Board of Directors. The Board of Directors shall have

the authority to hire, employ, evaluate and terminate an executive staff to carry out Board functions.

2. Primary Management Official Employment. The General Manager shall have the power to employ Primary Management for the Gaming Enterprise(s) in accordance with the laws and resolutions of the Tribe. Any employment contract entered into in accordance with this Section shall be ratified by the Board of Directors. The Board of Directors shall be provided the evaluation reports regarding the performance of all Primary Management on an annual basis or more frequently as needed. The General Manager shall keep the Board informed of any matters concerning performance of Primary Management employees
3. Personnel Policies and Handbook. The Board of Directors shall have the power to approve and amend the Personnel Policies and Handbook for the Gaming Enterprise(s), subject to the overriding authority of the Tribal Council to alter such documents by law or resolution. The Board of Directors shall provide at least a 30-day advance notice to the Chairman and Tribal Council of all proposed amendments.
4. Grievance Procedures. Within thirty (30) days of the effective date of this Statute, the Board of Directors, in consultation with the General Manager, shall prepare a comprehensive Grievance Procedure Policy which clearly identifies what personnel actions may be grieved. At a minimum, the Policy shall create a Board of Review made up of Enterprise employees who shall be authorized to hear grievances and make binding decisions. Any grievances pending before the Board of Directors on the date this Statute goes into effect shall be stayed and held in abeyance until a Board of Review has been created. Employees within a bargaining unit represented by an exclusive bargaining representative on or after the effective date of this Statute shall be exempt from application of this Grievance Procedure Policy.
5. Collective Bargaining Agreements; Contracts. The Board of Directors is expressly delegated the authority to enter into Collective Bargaining Agreements for the Gaming Enterprise(s) on behalf of the Tribe in accordance with Article X of this Statute. Collective Bargaining Agreements shall only be approved by a duly authorized Resolution which shall be forwarded to the Executive and Legislative Office for filing with the Board's Report
6. Release of Financial Information. The Board of Directors is expressly delegated authority to release necessary financial information to support the Gaming Enterprise(s) Casino Resort's position(s) during any collective bargaining process.

1 Financial information released shall be subject to the confidentiality provisions  
2 adopted by LTBB.

3 7. Contracts. The Board of Directors shall have the power to approve contracts up to  
4 and including \$500,000.00 without Tribal Council approval subject to those  
5 limitations identified in Article XI of this Statute.

6 8. Expenditures. The Board of Directors shall authorize all Gaming Enterprise  
7 capital expenditures, and shall authorize all other expenditures in excess of  
8 \$50,000.00, excluding budgeted daily operational expenses.

9 D. Additional Duties of Chairperson and Vice-Chairperson. In addition to all other duties of  
10 the Board of Directors contained in this Statute, the Chairperson, or in his or her absence  
11 the Vice-Chairperson, shall be responsible for carrying out the following additional  
12 duties:

13 1. Mandatory Reporting Requirements. Ensuring the accuracy and timely  
14 submission of all mandatory budgets and reports in accordance with the schedules  
15 set forth in Section XII of this Statute.

16 2. Mandatory Distributions. Ensuring the accuracy and timeliness of all mandatory  
17 distributions of gaming revenues in accordance with the schedules set forth in  
18 Section XIII of this Statute.

19 3. In the event that any mandatory distribution or reporting requirements are not met  
20 in accordance with the provisions of this Statute , then the Chairperson, or Vice  
21 Chairperson in his or her absence, shall submit to the Executive and Legislative  
22 Office a comprehensive Corrective Action Plan which, at a minimum:

23 a. Identifies with specificity the individual(s) responsible for the Gaming  
24 Enterprise's failure to comply with the provisions of this Statute;

25 b. Identifies with specificity any disciplinary action taken against the  
26 responsible individual(s); and

27 c. Identifies with specificity what action the Board has taken to avoid future  
28 non-compliance with the provisions of this Statute; and

29 d. A Corrective Action Plan submitted under this Section shall be delivered  
30 to the Executive and Legislative Office within three (3) business days of  
31 the date of default. The Tribal Council shall place the matter on the next  
32 available Tribal Council closed session agenda for discussion.

SECTION X. LIMITED AUTHORITY TO WAIVE SOVEREIGN IMMUNITY

- A. Limited Delegation of Authority - General. The Tribal Council expressly delegates its authority to the Board of Directors to waive or limit the right of the Gaming Enterprise(s) to be immune from suit in accordance with LTBB Law, subject to the limitations contained in this Article.
- B. Authority. The Board of Directors shall have limited authority to waive the sovereign immunity of the Gaming Enterprise(s) in accordance with the terms and limitations set forth in this Article in the following circumstances:
1. The Board of Directors shall have limited authority to execute Collective Bargaining Agreements for the Gaming Enterprise(s) on behalf of the Tribe. To the extent a Collective Bargaining Agreement provides for a waiver of the Tribe's sovereign immunity, the Board is authorized to execute such a waiver, but only to the extent that such a waiver is consistent with the waiver of sovereign immunity provided by LTBB Law or any amendments thereto.
  2. The Board of Directors shall have the additional limited authority to waive the sovereign immunity of the Gaming Enterprise(s) only when contracting for essential daily operational needs.
- C. Limitations to Waiver Authority. Any waiver of sovereign immunity shall be subject to the following limitations in order to be valid and enforceable:
1. A waiver of sovereign immunity authorized in accordance with Section 10.02(b) above shall be limited to claims against the Gaming Enterprise(s) and not the Tribe; and
  2. The Board of Directors shall not have authority to waive the right of the Gaming Enterprise(s) to be immune from suit for damages; and
  3. For purposes of this Statute only, "damages" do not include remedies or awards for wages or other "make whole" remedies that employees may be entitled to recover pursuant to a Collective Bargaining Agreement entered into pursuant to the LTBB Fair Employment Act.
- D. Procedure. Only waivers of the sovereign immunity of the Gaming Enterprise(s) that strictly comply with the procedures set forth in this Section shall be valid and enforceable:



1. The Board of Directors shall only waive the sovereign immunity of the Gaming Enterprise(s) by duly authorized Resolution which contains the following information:
  2. The precise waiver and any limitation(s) to the waiver as identified in the contract or Collective Bargaining Agreement; and
  3. The forum and choice of law which will govern claims or disputes.
  4. A copy of the authorizing Resolution shall be forwarded to the Executive and Legislative Office for filing with the Board's Report.
- E. Non-Delegable Authority. The Tribal Council expressly reserves all other authority to waive the sovereign immunity of the Tribe and the Gaming Enterprise(s) in accordance with the LTBB Constitution.

#### SECTION XI. LIMITATIONS TO AUTHORITY AND ACCESS

- A. Official Action Required. No Member of the Board of Directors shall be authorized to act independently or in the absence of an official action taken by roll call vote.
- B. Limitations on Access. The Board of Directors shall be authorized to access any areas of a Gaming Enterprise upon proper notification to the General Manager.
- C. Limitations on Contracting Authority. The Board of Directors shall not have the power to enter into or approve any contracts for legal counselor or construction contracts, nor may the Board enter into any form of contract or agreement or initiate negotiations with any municipality, nation, Indian Tribe, state or political body, without the approval of the Tribal Council. Contracts and agreements shall only be approved by a duly authorized Resolution which shall be forwarded to the Executive and Legislative Office for filing with the Board's Report.
- D. Limitation on Authority to Terminate Employment. The Board of Directors shall have no independent authority to intervene or intercede in any personnel termination of employment. The Board shall retain authority related to employment of the General Manager in accordance with Section 9.03(a) of this Statute and over the Primary Management in the event of an absence of a General Manager.
- E. Limitation on Authority to Obligate Funds. The Board of Directors shall have no authority to obligate funds outside the parameters of the approved budget without prior

1 approval by the Tribal Council including, but not limited to, funding connected to any  
2 bonus or profit sharing programs.

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4 SECTION XII. BUDGETS; REPORTING REQUIREMENTS; SCHEDULES -  
5 REQUIRED

6 The operation of the Gaming Enterprise(s) is governed by the provisions contained within  
7 this Article. No deviation from approved plans and budgets shall occur unless approved by the  
8 Board of Directors and ratified by Tribal Council Resolution.

9 A. Annual Budget. The Board of Directors shall prepare, or cause to be prepared a separate  
10 proposed Annual Budget for each Gaming Enterprise and present the annual budget to  
11 the Tribal Council and in accordance with the power of the Tribal Council to approve  
12 or amend the annual budget; provided, that the Annual Budget shall include at a  
13 minimum:

- 14 1. Statements of revenue and expenses for three years:
  - 15 a. For the budget year
  - 16 b. Actual results for the prior year
  - 17 c. Actual results year to date plus budget for the current year
  - 18 d. The statement of revenue and expenses shall be presented:
    - 19 i. By quarter;
    - 20 ii. Summary statement of all departments and other operating  
21 segments
    - 22 iii. Detailed statements by department or other operating segment
    - 23 iv. Detailed statement of monthly revenue by category
  - 24 e. Schedule of budgeted depreciation & capital replacement reserves.
  - 25 f. Detail of budgeted capital expenditures by month including justification  
26 for each expenditure/project over \$100,000.
  - 27 f. Budget cash flow statement by month.
  - 28 g. Loan amortization schedule for the budget year.

- h. Loan covenant compliance calculation by month for the budget year.
- i. Schedule and discussion of risks and opportunities for the budget year.
- j. Budgeted Board of Directors expenditures including but not limited to:
  - i. Compensation
  - ii. Expenses
  - iii. Office space requirements
  - iv. Staff costs
  - v. Consulting fees
  - vi. Professional fees

B. Annual Marketing Report. The annual marketing report shall report on the activities of the current fiscal year to date as well as for the upcoming fiscal year by month and shall include but not be limited to the following:

1. Executive summary
2. Situation analysis
3. Market analysis/target markets
4. Competitive analysis
5. Marketing strategies
6. Direct mail
7. Player development activities
8. Event profiles and pro-formas
9. Guest traffic and spend habits

C. Annual Human Resources Report. The human resources report shall report on the activities of the current fiscal year to date as well as for the upcoming fiscal year by month and shall include but not be limited to the following:

1. Head count schedule
2. Preference employment report

3. Hiring plans
  4. Training schedule
  5. Employee development plans
  6. Proposed changes to employee benefits / plans
  7. Compensation plans
  8. Full disclosure of any bonus type plans
  9. Status of Collective Bargaining Agreements and other union activities
  10. Termination report
- D. Annual Operating Plan & Report. The operating plan shall report on the proposed activities for the upcoming fiscal year by month and shall include but not be limited to the following:
1. Operating goals for the enterprise
  2. Operating goals for each department
  3. Proposed changes in operations
  4. Status of Collective Bargaining Agreements and other union activities
  5. Schedule and discussion of risks and opportunities
  6. Schedule for Submission of Annual Budgets and Reports. The annual budget and annual reports described above shall be submitted to the Executive and Legislative Office no later than September 1.

### SECTION XIII. MONTHLY REPORTS

The Board of Directors shall prepare, or cause to be prepared, a written monthly report to be submitted to the Executive and Legislative Office. The monthly report shall include as attachments all Resolutions authorized by the Board during the reporting period, and shall summarize the status of all material aspects of the operation of each Gaming Enterprise. The monthly report shall include, at a minimum:

- A. Statements of revenue and expenses that shall include:
1. Actual, budget and prior year results for the current month and year to date

- 1           2.     Summary statement of all departments and other operating segments
- 2           3.     Detailed statements by department or other operating segment
- 3           4.     Detailed statement of revenue by category
- 4           5.     Cash flow statement
- 5           6.     Capital replacement reserve schedule
- 6           7.     Three month forecast of revenues by category
- 7           8.     Balance sheet
- 8           9.     Current month
- 9           10.    Prior month
- 10          11.    Prior year end
- 11          12.    Schedule of actual capital expenditures vs. budget for the current month and year
- 12           to date
- 13          13.    Schedule of forecast capital expenditures vs. budget for the next three months
- 14          14.    Loan covenant compliance schedule
- 15          15.    Management narrative of operations
- 16          16.    Schedule and discussion of risks and opportunities for the next three months
- 17          17.    Marketing Department Report
- 18           a.     Impact of the past month's promotions
- 19           b.     Promotions scheduled for the next three months
- 20           c.     Entertainment venue and conference center use schedule for the
- 21           next three months
- 22          18.    Human Resources Report
- 23           a.     Headcount schedule
- 24           b.     Preference employment report
- 25           c.     Summary of new hires

d. Headcount forecast for the next three months

e. Termination report

19. Status of Collective Bargaining Agreements and other union activities

B. Schedule for Submission of Monthly Reports. The monthly report shall be submitted no later than the 15th day following month end.

C. Applicable Accounting Standards. The Board of Directors shall ensure that all budgets and reporting requirements contained in this Statute comply with Generally Accepted Accounting Practices in the United States as applicable.

SECTION XIII. Mandatory Distributions

Mandatory Distributions. The Board of Directors shall be responsible for ensuring the timely payment of all distributions required by applicable Federal, State or Tribal laws, Resolutions, Regulations, Compacts, or Agreements including, but not limited to, the following:

A. Distributions Required by Compact(s). Distributions mandated by any Compact between the Little Traverse Bay Bands of Odawa Indians and the State of Michigan shall be made in accordance with the terms of that Compact or any other Agreement entered into between the Tribe and the State.

B. National Indian Gaming Commission Payments. All payments required to be made to the National Indian Gaming Commission, or any other payments mandated by the Indian Gaming Regulatory Act.

C. Tribal Gross Gaming Tax. The Tribal Gross Gaming Tax shall be distributed monthly in arrears to the Tribe along with a certificate signed by an officer stating the amount of the tax and showing how such amount was computed. The distribution of the tax shall be made no later than twenty days after the end of each month and shall be based on percentages as set forth by Statute

D. Net Gaming Revenue. Distributions of net gaming revenue to the Tribal Government shall be made monthly, no later than twenty days after the end of each month.

SECTION XIV. TERMS OF OFFICE

- 1 Terms of Office. Each Member of the Board of Directors appointed under the provisions
- 2 of this Statute shall hold a term of office until reported as vacant by the Board.

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